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FEB 25 2010

MEMO TO: Mayor and City Council

THRU: Mary Wade, City Attorney *MW*

FROM: Glenn A. Brockman, Assistant City Attorney *GAB*

SUBJECT: Approve Amendment No. 2 to West Chandler Library Lease

DATE: February 16, 2010

RECOMMENDATION: Staff recommends that Council approve Amendment No. 2 to the West Chandler Library Lease to modify the current procedure for the City to determine whether to exercise the purchase option set out in Paragraph 35.25 of the Lease.

BACKGROUND/DISCUSSION: In 1998, the City entered into a lease for the construction and occupancy of the site of the Chandler Sunset Library near the intersection of Ray and Rural Roads in the West Chandler area. The Lease is for a 20-year period, which commenced on February 1, 2000. Paragraph 35.25 of the Lease gives the City the option to purchase the library site after the first 10 years of the lease period in accordance with the detailed process set out in the paragraph. Staff has met the first step in the process by delivering to the landlord within 30 days after the 10th anniversary of the lease commencement date a written notice of the City's interest in exercising the option (the "Option Notice").

At staff's request, the landlord has agreed to a modification of the remainder of the option process. The current process is shown in Attachment A. The modified process is set out in Attachment B. If Council approves the modification, the City Manager will execute a more formal Lease amendment substantially in accordance with the provisions of Attachment B and in a form approved by the City Attorney.

This Amendment No. 2 simply modifies the option *process*. It provides a more efficient process for ascertaining the fair value of the property. Once the value of the property is fixed, the City Council can then elect to have the City purchase the property at the value established or simply continue to lease the site for the second half of the current lease period. That election to purchase or not purchase the site based upon the appraisal obtained by the City will need to be made by Council at its second meeting in March, but not now.

FINANCIAL IMPLICATIONS: The cost of the appraisal will be borne by the City and is not expected to exceed the typical cost of an appraisal of commercial property made by a qualified, experienced, licensed appraiser.

PROPOSED MOTION: Move to approve Amendment No. 2 to the West Chandler Library Lease and to authorize the City Manager to execute a more formal Lease amendment substantially in accordance with Attachment B, attached hereto, subject to approval of the form of the amendment by the City Attorney.

GAB/

ATTACHMENT A

PURCHASE OPTION. Subject to the approval of Landlord's lender, if any, within thirty (30) days after the ten (10) year anniversary of the Commencement Date of this Lease, Tenant may elect to purchase the Premises and the real property on which the Premises is located (the "Premises Property") by delivering to Landlord a written notice referring to this **Paragraph 35.25** (the "Option Notice"). If Tenant so elects, both Tenant and Landlord, within twenty (20) days after Landlord's receipt of the Option Notice, shall select a qualified appraiser ("Qualified Appraiser"). A Qualified Appraiser shall mean a person who is: (i) not an affiliate of Landlord nor an affiliate of Tenant, and (ii) a member of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers or any successor associations. The Qualified Appraisers appointed by Tenant and Landlord, within ten (10) days after the date when the last Qualified Appraiser is appointed, shall appoint a third Qualified Appraiser (the "Independent Appraiser"). The Independent Appraiser, within twenty (20) days after the date when appointed, shall independently determine the fair market value of the Premises (the "Fair Market Value") and deliver to Tenant and Landlord such reports or documents evidencing the Fair Market Value (the "Fair Market Value Report"). Within thirty (30) days after Tenant's receipt of the Fair Market Value Report, Tenant, at Tenant's option, shall deliver written notice to Landlord that it: (i) desires to purchase the Premises Property (the "Purchase Notice"); or (ii) desires not to purchase the Premises Property (the "Rejection Notice"). If Tenant delivers the Purchase Notice to Landlord, Tenant and Landlord, within thirty (30) days thereafter, shall enter into a mutually agreeable purchase and sale contract for the purchase by Tenant of the Premises Property which contract, among other things, shall: (i) provide for a close of escrow on or before sixty (60) days after the date of such contract; (ii) require the parties to split the costs imposed by any escrow agent or company retained by the parties to consummate such purchase by Tenant; and (iii) provide for a purchase price for the Premises Property equal to the Fair Market Value as set forth in the Fair Market Value Report. If Tenant delivers the Rejection Notice, Tenant shall promptly pay for the cost of the Fair Market Value Report and all other costs, expenses or charges imposed by the Qualified Appraisers or the Independent Appraiser. Anything in this paragraph to the contrary notwithstanding, the purchase option granted Tenant in this paragraph shall be contingent upon Landlord's receipt of all necessary approvals and/or consents from the City of Chandler such that, upon the sale of the Premises Property to Tenant, the remaining portion of the Shopping Center shall be in compliance with all applicable City of Chandler ordinances, laws or regulations including, without limitation, those relating to parking, density or use of the Shopping Center. If Tenant does not timely exercise the purchase option granted in this paragraph, said purchase option shall be deemed waived by Tenant and Tenant shall have no further right to purchase the Premises Property or any part of the Shopping Center.

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McCain & Bursh PLC • ATTORNEYS AT LAW

901 W. McDowell Road • Phoenix, Arizona 85007-1729

Telephone (602) 604-2138 • Facsimile (602) 604-2114 • www.mccain-bursh.com

LAW DEPARTMENT

Writer's Direct Line: (602) 604-2166

E-Mail: mmccain@mblawaz.com

February 4, 2010

Via Facsimile (480) 782-4652 and Regular Mail

City of Chandler
Attn: Glenn Brockman, Esq.
P.O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008

Re: Shopping Center Lease, dated July __, 1998, between Chandler Sunset, LLC ("Landlord") and the City of Chandler ("Tenant"), Chandler City Library located within Chandler Sunset Plaza (the "Premises")

Dear Glenn:

This letter is in response to your letter to me dated February 2, 2010 regarding Tenant's option to purchase the Premises pursuant to Paragraph 35.25 of the Lease (the "Option"). I have spoken with Landlord's representative and am authorized to respond to your proposed modifications with respect to the exercise of the Option. In response to each of your three proposed modifications, Landlord proposes the following:

1. Landlord is acceptable with Tenant selecting one of the appraisers identified in your letter to prepare the Fair Market Value Report contemplated in Paragraph 35.25 of the Lease provided Tenant does so at its sole cost and expense and delivers the Fair Market Value Report to Landlord by the deadline set forth in paragraph 2 below.

2. Landlord is acceptable to extending the deadline for the preparation and delivery of the Fair Market Value Report until April 1, 2010. In order to exercise the Option, Tenant shall deliver the Fair Market Value Report to Landlord by such deadline along with a Purchase Notice or Rejection Notice. If Tenant delivers the Rejection Notice, the Option shall be null and void and of no further force and effect. If Tenant delivers the Purchase Notice to Landlord, Landlord will, within twenty (20) days after receipt of the Purchase Notice, either accept the Fair Market Value of the Premises set forth in the appraiser's Fair Market Value Report in which event the parties shall proceed to enter into a mutually agreeable purchase and sale agreement in accordance with Paragraph 35.25 of the Lease, or Landlord will object to such Fair Market Value by delivery of written notice to Tenant. In the event Landlord objects to the Fair Market Value of said appraiser after Tenant has delivered the Purchase Notice, the parties shall proceed to select a Qualified Appraiser pursuant to the terms and conditions of Paragraph 35.25 of the Lease within twenty (20) days after the delivery of Landlord's objection whereupon the terms,


conditions and timeline of Paragraph 35.25 of the Lease shall govern the determination of the Fair Market Value and Tenant's exercise of the Option. However, the closing under the purchase agreement for the Premises shall occur in all events on or before August 31, 2010.

3. Landlord is acceptable with the description of the property you provided in subparagraph 3 of your letter, subject to Landlord's right to review and object to the Fair Market Value Report as provided above and provided that the appraisal values the property taking into account the highest and best use of the Premises (as determined by the appraiser), the sales comparison approach, cost approach, and income approach.

All capitalized terms not defined herein shall have the meaning set forth in the Lease. Please confirm in writing whether the terms and conditions outlined above are acceptable to Tenant. If acceptable, Landlord prefers to do a more formal Lease amendment to document the above terms, which I can take the lead in preparing.

Feel free to call me to discuss any issues.

Sincerely,



Marc D. McCain
Attorney at Law, For the Firm

MDM/mv

cc: Richard Dlugas, City of Chandler, P.O. Box 4008, Mail Stop 501, Chandler, AZ 85244-4008 (via regular mail)
Michael Mileski (via electronic mail only)